



Thus Abbott, a party to this litigation, was not required to produce documents relating to TAP and a specific TAP drug, LUPRON<sup>®</sup>, because they are not relevant to plaintiffs' allegations.

4. The Government attempted to sidestep Magistrate Judge Bowler's ruling regarding TAP documents by issuing third-party subpoenas requesting the documents from non-parties instead of Abbott. But Magistrate Judge Bowler did not allow the tactic to succeed; she ruled, consistent with this Court's prior decisions that only a narrow range of documents were relevant to the Government's case and that the Government could not force non-parties to produce documents outside of that narrow range. (Dkt. 4483 at 3-4.) Because TAP's sales and marketing practices are not at issue in this case, and because TAP did not produce or market any of the drugs named in the complaint, none of the documents referencing only TAP's pricing and marketing practices or only TAP's drugs could be compelled from third-parties under Magistrate Judge Bowler's ruling.

5. The Government objected to Magistrate Judge Bowler's ruling. (Dkt. 4622.) This Court affirmed the relevant discovery limits set by Magistrate Judge Bowler in its Order dated Sept. 7, 2007. (Dkt. 4701.)

6. In paragraph 6 of that Order, the Court stated, "TAP shall produce all documents expressly referencing Abbott or directly involving Abbott personnel relating to AWP/government reimbursement issues or marketing a spread involving AWP during the 1991 to 2003 time period." *Id.* TAP is unsure of the basis for this ruling and wishes to clarify its obligations because (1) TAP is not a party to this case; (2) no third party discovery has been served on TAP; and (3) as a joint venture, a separate corporate entity, TAP is not subject to discovery requests served on Abbott. (Indeed, even if TAP were served with a subpoena, it

would be inconsistent with Magistrate Judge Bowler's March 16 and July 19 Orders to force TAP, a non-party, to have a greater discovery burden than Abbott, a party.)

7. Based on the arguments presented by the parties, TAP surmises that the Court simply meant, in paragraph 6 of its Order, to make the unremarkable point that if a document is discoverable from Abbott or a third party under the relevance parameters set out by this Court and the Magistrate Judge in this litigation, it should not be held back just because it happens to mention TAP. TAP cannot imagine that the Court meant to enter an order that would require TAP itself to review millions of pages of its own documents, when it is neither a party, nor the subject of any pending discovery request – and certainly not one at issue in the third-party subpoena briefing on which the Order was based.

WHEREFORE, TAP respectfully requests that paragraph 6 of the Order be amended to clarify that if a document is discoverable from Abbott or a third party under the relevance parameters set out in this litigation, it should not be held back just because it happens to mention TAP. Paragraph 6 does not impose discovery burdens directly on non-party TAP.

Dated: September 17, 2007

Respectfully submitted,

TAP PHARMACEUTICAL PRODUCTS  
INC.

By: /s/ Jason G. Winchester

James R. Daly  
Tina M. Tabacchi  
Jason G. Winchester  
Brian J. Murray  
JONES DAY  
77 W. Wacker Dr., Suite 3500  
Chicago, Illinois 60601-1692  
Telephone: (312) 782-3939  
Facsimile: (312) 782-8585

R. Christopher Cook  
David S. Torborg  
JONES DAY  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001-2113  
Telephone: (202) 879-3939  
Fax: (202) 626-1700

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on September 17, 2007, the foregoing **THIRD-PARTY TAP PHARMACEUTICAL PRODUCTS INC.'S MOTION TO CLARIFY PARAGRAPH SIX OF THE COURT'S SEPTEMBER 7, 2007 ORDER** was served upon all counsel of record in this action electronically by posting a true and correct copy of same via Lexis-Nexis.

/s/ Brian J. Murray